No. 437

FILED
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CHARLES ELMORE CROPLEY
CLERK

In The Supreme Court of the United States

APPEAL FROM THE SUPREME COURT OF OHIO

No. 29,145

AND

FROM THE COURT OF APPEALS, EIGHTH JUDICIAL DISTRICT OF OHIO.

No. 16,655

STATE OF OHIO, ex rel S. H. SQUIRE, SUPT. OF BANKS IN CHARGE OF LIQUIDATION OF THE UNION TRUST COMPANY, SUB. PLFF. UNION PROPERTIES, INC.,

Plaintiffs,

vs.

ROBERT W. HALLIDAY, ET AL.,

Defendants.

PETITION AND BRIEF FOR WRIT OF CERTIORARI IN THE SUPREME COURT OF OHIO AND TO THE COURT OF APPEALS, EIGHTH JUDICIAL DISTRICT OF OHIO.

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SUPREME COURT OF THE UNITED STATES

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To the Honorable Justices of The Supreme Court of The United States:

Now comes Robert W. Halliday, resident of Cleveland, Ohio, Petitioner herein, and says:

On the 17th day of March, 1938, The Court of Appeals, 8th Judicial District of Ohio entered a decree in foreclosure of a mortgage upon the following described premises:

Parcel No. 1: Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being Sub Lots Nos. 9 and 10 in Olive A. Meech's Subdivision of part of Original One Hundred Acre Lot No. 457, as shown by the recorded plat of said Subdivision in Volume 4 of Maps, Page 24 of Cuyahoga County Records, excepting therefrom 43 feet from front to rear of the Easterly side of said Sublot No. 10.

Parcel No. 2: Also Sub Lots Nos. 7 and 8 in the Olive A. Meech's Subdivision of part of Original One Hundred Acre Lot No. 457, as shown by the recorded plat of said Subdivision in Volume 4 of Maps, Page 24 of Cuyahoga County Records, and bounded and described as follows:

Beginning on the Southerly line of Richmond Avenue S. E., (formerly Richmond Street), at the Northeasterly corner of land conveyed by Frank L. Crobaugh and wife, to Catherine Hermann, by deed dated June 12, 1905, and recorded in Volume 979, Page 112 of Cuyahoga County Records; thence Easterly along said Southerly line of Richmond Avenue S. E., about 128.85 feet to the Northeasterly corner of said Sub Lot No. 8; thence Southerly along the Easterly line of said Sub Lot No. 8, 152.625 feet to the Southeasterly corner of said Sub Lot No. 8; thence Westerly along the Southerly line of said Sub Lot No. 8, 16 feet to the most Easterly corner of a triangular parcel of land conveyed by Olive A. Meech, a feme sole, to The Connotton Valley Railway Company, by deed dated August 19, 1881, and recorded in Volume 328, Page 81 of Cuyahoga County Records; thence Northwesterly along the Northeasterly line of land so conveyed to The Connotton Valley Railway Company, to the Southeasterly corner of land conveyed to Catherine Hermann, as aforesaid; thence Northerly along the Easterly line of land conveyed to Catherine Hermann, as aforesaid, about 164.375 feet to the place of beginning, as appears by said plat.

In case No. 16655 on the 17th day of May, 1938, the Sheriff of Cuyahoga County sold said premises to The Union Properties, Inc., at two-thirds of the appraisal and on the 10th day of JANUARY 1939, said Court of Appeals confirmed the sale of said premises by the Sheriff of Cuyahoga County to The Union Properties, Inc., which corporation had been substituted in said foreclosure proceedings as the plaintiff, prior to the time of said Sheriff's sale.

On the 23rd day of December, 1938, and prior to the date of confirmation of said sale, your petitioner filed objections in the Court of Appeals opposing confirmation of said sale on the ground that the Sheriff's appraisal was too low and upon no other ground.

Thereafter your petitioner discovered that some of said appraisers were not freeholders of Cuyahoga County, Ohio, and had not actually viewed the premises to be appraised and that some of said appraisers were not disinterested parties but had pecuniary interests in The Union Properties, Inc., and also discovered that one of the Judges of the said Court of Appeals had at the time of Judgment and confirmation of sale substantial pecuniary interests in and economic arrangements with The Union Properties, Inc., and its predecessors in title.

Promptly after becoming aware of the aforesaid circumstances your Petitioner filed a petition in said Court of Appeals in said case No. 16655 to set aside said Sheriff's Sale and said confirmation of said sale for the reason that said appraisal and said sale were void and subsequently filed a supplementary petition to set the decree of foreclosure aside on the ground that one of the Judges of said Court of Appeals had, at the time said decree was entered, substantial pecuniary interests in and economic arrangements with said The Union Properties, Inc., and its predecessors in title.

On the day of December, 1941, said Court

of Appeals issued an order to take depositions of sundry witnesses.

That said depositions were subsequently duly taken and that on the 2nd day of March, 1942, said cause came on for hearing before said Court of Appeals and said depositions were presented and delivered to said Court, the pertinent part of which appears in Defendant's Exhibit Z and attached to the within petition and made a part hereof.

On said 2nd day of March, 1942, in said Court of Appeals at the hearing of said pending cause one John Crowl, a qualified court reporter, took shorthand notes of said proceedings. A pertinent part of said proceedings, as appears from transcription of said shorthand notes, discloses that two of the Judges of said Court of Appeals had substantial pecuniary interests in The Union Properties, Inc., and its predecessors in title, on the aforesaid 17th day of March, 1938, when said Court of Appeals rendered said Judgment and decree in foreclosure and on aforesaid 10th day of JANUARY 1939, when said Court of Appeals confirmed said Sheriff's sale to said The Union Properties, Inc.

Said Court of Appeals rendered Judgment against your Petitioner and dismissed his petition to vacate said sale and said confirmation of sale and dismissed his supplemental petition to vacate and set aside said decree of foreclosure and made an entry of said Judgment in the court journal on the 16th day of March, 1942. Said Judgment is embodied in the following words:

> "Prayer of petition and supplemental petition for vacation of judgment denied. Exceptions noted. Petitions are dismissed. Exceptions noted."—*Journal 14, 473.*

Thereafter on the 3rd day of April, 1942, your Peti-

tioner filed with said Court of Appeals and with the Supreme Court of Ohio a Notice of Appeal as of Right to the Supreme Court of Ohio, from said Judgment, in accordance with the rules and law of Ohio Appellate procedure, and subsequently filed a Motion to Certify.

On the 3rd day of June, 1942, the Supreme Court of Ohio rendered final Judgment in said cause and overruled said Motion to Certify and denied to your Petitioner the Appeal of Right and entered said Judgment on the 3rd day of June, 1942, in the following language:

> "Motion for an order directing the Court of Appeals to Certify its Record. It is ordered by the Court that this motion be, and the same hereby is overruled. Appeal of Right dismissed for the reason no debatable constitutional question is involved in said cause."—*Journal 14, page 603.*

Your Petitioner contended in his Briefs filed in said Court of Appeals, the Court of first instance, that, in the prior actions he had been deprived of property without due process of law contrary to Amendment XIV, Section 1 of the Constitution of the United States, and alleged the same in his pleadings filed in said Court of Appeals, and your Petitioner made the same contention before the Supreme Court of Ohio.

WHEREFORE your Petitioner respectfully prays that a Writ of Certiorari be issued by this Honorable Court to command the Supreme Court of Ohio to certify and to send to this Court for review and determination a transcript of the record in case numbered 29,145 on its Docket and a transcript of the record and proceedings in case numbered 16655 on the Docket of said Court of Appeals and that the Judgment of the Supreme Court of Ohio may be reversed by this Honorable Court, and that an Order may be issued directing the Supreme Court of Ohio to grant to your Petitioner a hearing on MERIT.